IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

WRIT PETITION NO.2139 OF 1991

M/s.Mohanlal Keshavlal & Co.,
a partnership firm having its
office at 79/81, A.G.Marg,
Bombay 3. Petitioners

vs.

1. Agricultural Produce Market Committee,
a body Corporate duly incorporated
under the Maharashtra Agricultural
Produce Market (Regulation) Act, 1963
having its office at Vardhaman Chambers,
5th floor, 127-G, Kalyan Street,
Bombay 400 009.

2. State of Maharashtra, through its
Government Pleader, having his
office at P.W.D.Building, Ground
Floor, Flora Fountain, Bombay-400023.

3. Union of India, through its
Advocate, having his office at 2nd
floor, Aayakar Bhavan, Churchgate,
Bombay 400 020. Respondents

Mr.Piyush Shah i/b. M/s.B.R.Oza & Co. for the petitioners.

Mr.Y.R.Naik i/b. Mr.Prashant Naik for the respondent no.1.

Mr.D.A.Dube with Mr.Y.R.Mishra for the respondent no.3.

**CORAM : R. M. LODHA &**
**J.P. DEVADHAR,JJ**.

**DATED : 23rd June 2005**

**ORAL JUDGMENT (Per R.M.Lodha,J.)**

The petitioner is the wholesale trader in the cardamom. The first respondent is the Agricultural

Produce Market Committee (for short, 'APMC'). The case of the petitioner is that the cardamom is grown in the southern States of Kerala, Karnataka and Tamil Nadu. The Parliament of India enacted the Spices Board Act, 1986 for development of the export of the spices and for the control of the cardamom industry including the control of cultivation of cardamom and matters connected therewith. The said Spices Board Act, 1986 (for short, 'Central Act') came into effect on 20th March 1986. The cardamom falls under the authority of the Spices Board constituted under the Central Act and, according to the petitioners, the cardamom is plantation crop and not an agricultural produce. The cardamom being the plantation crop, the Central Act prevails over the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1973. Thus, it is contended by the petitioner that market fee cannot be levied on the produce of the cardamom. Reliance is placed on the judgment of the Supreme Court in the case of Krishi Utpadan Mandi Samiti & ors. v. Pilibhit Pantnagar Beej Ltd. & anr., (2004)1 SCC 391.

2. We considered the submissions of the learned counsel for the petitioner and, in our considered view, these submissions cannot be accepted.

3. The Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 was enacted by the State

Legislature of Maharashtra. The State Act of 1963 received the assent of the Governor on 30th April 1964 and came into effect from 5th May 1964. Section 2(1)(a) defines "agricultural produce" to mean all produce (whether processed or not) of agriculture, horticulture, animal husbandry, apiculture, pisciculture and forest specified in the Schedule. The cardamom specifically finds place at item X(6) of the Schedule. In view thereof, it is clear that cardamom is agricultural produce under the State Act of 1963 and its marketing is regulated by that Act including the grant of licence in the levy of market fee. The judgment of the Supreme Court in the case of Krishi Utpadan Mandi Samiti v.Pilibhit Pantnagar Beej Ltd. relied upon by the learned counsel for the petitioner has no application in the case in hand. The Supreme Court was concerned with U.P. Krishi Utpadan Mandi Adhiniyam, 1964 and the Seeds Act, 1966. It was held by the Supreme Court that since the seed is a separate commodity from grain, the same is not covered under Schedule I of the Adhiniyam and as such no market fee is leviable over the sale and/or purchase of the same. In the case before us, the cardamom is agricultural produce covered under Schedule I of the Act of 1963 and as such market fee shall be leviable over the sale and/or purchase of the same.

4. As regards the effect of Spices Board Act, 1986

enacted by the Indian Parliament in relation to cardamom, suffice it to say that in so far as the levy and collection of market fee on sale of cardamom in the market area is concerned, the State Legislature is competent to enact law in this regard as it is covered by entry 28 of List 2 of Schedule VII of the Constitution of India. In ITC Ltd. v. Agricultural Produce Market Committee & ors., (2002) 9 SCC 232, the issue before the Supreme Court was about the validity and applicability of the Bihar Agricultural Produce Markets Act, 1960 and the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 to the extent these State Legislations dealt with sale of tobacco in the market area with particular reference to the levy and collection of market fee after the enactment of the Tobacco Board Act, 1975 - a Parliament Legislation. The majority view of the Constitution Bench in that case was that parliament is not competent to pass legislation in respect of sale of agricultural produce of tobacco by legislating in the field of legislation covered by Entry 52 of the Union List. It was held that levy and collection of market fee on sale of tobacco in market area is solely within legislative competence of the State legislature by virtue of Entry 28 of List 2 of Schedule VII. It was also held that the Agricultural Produce Market Act falls within the ambit of 'markets' and covered by Entry 28. It was specifically held that

Parliament is not competent to legislate in respect of the sale of tobacco in market area and levy and collection of market fee on that market produce. Applying the same principles to the case in hand, no doubt is left that the levy and collection of market fee on sale and purchase of cardamom in the market area is covered by the State Act of 1963 and the competence of the State Legislature in that regard cannot be doubted.

5. As we have already noticed above that cardamom is covered by item X(6) of Schedule appended to the State Act of 1963, the levy and collection of market fee in relation to the purchase and sale of the State agricultural produce cannot be said to be illegal.

6. Writ petition has, accordingly, no merit and is dismissed with no order as to costs.

**(R.M. LODHA,J.)**

**(J.P. DEVADHAR,J.)**